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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,996	07/11/2003	R. Gary Turnbull	TRG-10002/01	4249
25006	7590	04/05/2006	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C			HWANG, VICTOR KENNY	
PO BOX 7021			ART UNIT	
TROY, MI 48007-7021			PAPER NUMBER	

3764

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/617,996	<b>Applicant(s)</b> TURNBULL ET AL.	
	<b>Examiner</b> Victor K. Hwang	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-28 is/are allowed.
- 6) ☒ Claim(s) 1-15 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 12, 2006 has been entered.

***Response to Amendment***

2. The amendment filed January 12, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the recitation in claims 1, 10 and 15 that the passenger compartment includes "a steering control for the vehicle" is considered to be new matter. Though the specification, on page 1, lines 6-7, indicates that the driver seat is an ideal location, this is not an inherent indication that the driver seat is in a passenger compartment as suggested by the claim language. Also, Fig. 1 does not show any steering control as claimed.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “steering control” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 10 and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 10 and 15 recite a limitation considered to be new matter. See the above objection to the amendment filed January 12, 2006.

*Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 2, 5, 10, 11 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by *Duvernay et al.* (US Pat. Pub. 2003/0144115 A1). *Duvernay et al.* discloses an exercise system for use by a passenger in an automobile, planes, trains or boats (paragraphs [0006] and [0019]). An exercise apparatus 10 includes a frame and an exercise device 18 positioned on the frame. The frame is positioned on the floor of a vehicle, such as an automobile, proximate a vehicle seat so that an individual positioned in the vehicle seat may use the exercise apparatus. The frame includes a pair of base members 60, a support leg 28 extending from each base member, and a crossbeam 26 that is connected to and extends between each support leg. The base members

have a bottom surface 62 that is complimentary to the shape of the floor of the vehicle. The crossbeam includes adjustment means 58 such that the dimensions of the frame may be adjusted by a user.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-5, 8, 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hanc* (Newsday, Fitness File, 11/22/99, pg. 13) in view of *Location Fitness* (website information with a heading date of May 12, 1999) and *Nathaniel* (US Pat. 5,013,035). *Hanc* discloses a vehicle comprising a mobile gym containing a variety of exercise equipment including treadmills, stationary bikes, and multi-station gym equipment. The multi-station gym equipment includes a leg extension/leg curl unit. The vehicle inherently has a floor upon which the exercise equipment is supported. The exercise equipment comprising the stationary bike and the multi-station gym equipment inherently include seats for supporting a user. These seats, being in a vehicle, are reasonably considered to be vehicle seats. Providing mobile gym facilities is well known in the exercise art. The vehicle disclosed is a box truck. A box truck is known to include a steering control for the vehicle in the front cab passenger compartment. Applicant's

claim language does not require that the passenger compartment in the preamble be the same passenger compartment in the body of the claims.

*Hanc* does not disclose the exercise equipment and vehicle seat secured to the floor of the vehicle (claims 1 and 10); the exercise apparatus including a frame comprising a pair of base members directly contacting the floor, a support leg extending from each base member, and a crossbeam that is connected to and extends between each support leg (claims 2 and 10); a mounting fixture positioned on a support leg (claims 3 and 12) or a base member (claim 4), the exercise device being removably secured to the mounting fixture; each base member having a bottom surface that is complementary to the shape of the floor of the vehicle (claim 5); and the exercise device includes a grip, an elastic cord and a clip, the grip and clip being secured together by the elastic cord and the clip being removably securable to a mounting fixture (claims 8 and 13).

*Location Fitness* discloses a mobile gym facility vehicle. The facility can be customized to any fitness equipment requirement or personalized training specification. Any specific equipment can be requested to be included.

*Nathaniel* discloses an exercise apparatus including a frame comprising a pair of base members 22,24, a support leg 12,14 extending from each base member, and a crossbeam 16 that is connected to and extends between each support leg. Mounting fixtures 36-43 are positioned on the support legs and base member 26. The exercise device includes a grip 57, an elastic cord 50 and a clip 53, the grip and clip being secured together to opposite ends of the elastic cord and the clip being removably securable to one of the mounting fixtures. Each base member has a substantially flat bottom surface and is adapted for support on a horizontal floor surface.

Inherently, the apparatus would be secured to the floor since it is designed to be supported on a horizontal floor. Fasteners are not required for an apparatus to be secure. The pair of base members are designed to secure the apparatus by providing a large footprint to minimize tipping. Additionally, the drawing of Fig. 5 shows apertures in the base member 24, which one of ordinary skill in the art would reasonably conclude to receive fasteners to further secure the apparatus to the floor. The exercise apparatus may be utilized by two individuals to perform simultaneous workouts in a minimum amount of space. The base members, support legs and crossbeam are designed to be disassembled expediently, and therefore, the support legs are considered to be rotatable with respect to its base member and the crossbeam.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the mobile gym facility vehicle disclosed by *Hanc* with the exercise apparatus of *Nathaniel*, since *Location Fitness* discloses providing vehicles with exercise apparatus and that any exercise equipment can be part of a mobile gym facility configuration.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Hanc* (Newsday, Fitness File, 11/22/99, pg. 13) as modified by *Location Fitness* (website information with a heading date of May 12, 1999) and *Nathaniel* (US Pat. 5,013,035) as applied to claim 5 above, and further in view of *Jones* (US Pat. 5,171,198). *Hanc* as modified by *Location Fitness* and *Nathaniel* discloses the invention as claimed except for each base member including a flange and a longitudinal axis, the flange extending from the base member perpendicular to the longitudinal axis of the base member.

*Jones* discloses an exercise apparatus comprising base members 21,22 having longitudinal axes and flanges 27-30 extending perpendicularly from each base member. The flanges provide support for the base members (col. 4, lines 45-48).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the base members of the exercise apparatus of *Hanc* as modified by *Location Fitness* and *Nathaniel* with flanges, in order to provide support for the base members, as taught by *Jones*.

11. Claims 7, 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hanc* (Newsday, Fitness File, 11/22/99, pg. 13) as modified by *Location Fitness* (website information with a heading date of May 12, 1999) and *Nathaniel* (US Pat. 5,013,035) as applied to claims 2 and 10 above, and further in view of *Bushnell* (US Pat. 4,241,914). *Hanc* as modified by *Location Fitness* and *Nathaniel* discloses the invention as claimed except for the crossbeam including adjustment means such that the dimensions of the frame may be adjusted by a user (claims 11 and 15), the frame including a spring biased pin and plurality of apertures (claim 7). *Nathaniel* discloses that the dimensional relationships for the parts of the exercise apparatus, including variation in size are readily apparent and obvious (col. 5, lines 32-40).

*Bushnell* discloses an exercise apparatus having a frame comprising a pair of base members 12, a support leg extending from each base member, and crossbeams 11b that are connected to and extend between each support leg. The frame is dimensionally adjustable to vary its size, wherein the crossbeams are adjustable in their lengths.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the frame of *Hanc* as modified by *Location Fitness* and *Nathaniel* with adjustable an adjustable crossbeam, since *Nathaniel* discloses that variation in size of the frame would have been obvious and because *Bushnell* discloses that the crossbeam of an exercise apparatus may readily be made adjustable to vary the dimensions of the frame as needed.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the adjustability of the crossbeam by a spring biased pin and plural apertures since the examiner takes Official Notice of the equivalence of the adjustable sleeve of *Bushnell* and spring biased pin and plural apertures for their use in the exercise art and the selection of any of these known equivalents to provide an adjustable length would be within the level of ordinary skill in the art.

12. Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hanc* (Newsday, Fitness File, 11/22/99, pg. 13) as modified by *Location Fitness* (website information with a heading date of May 12, 1999) and *Nathaniel* (US Pat. 5,013,035) as applied to claims 1 and 10 above, and further in view of *Shugg* (US Pat. 6,159,133). *Hanc* as modified by *Location Fitness* and *Nathaniel* disclose the invention as claimed except for the exercise device comprising a belt.

*Shugg* discloses an exercise apparatus wherein the exercise device comprises a belt 54 linking two handles 32. The belt permits additional exercise of the chest area of a user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise device of *Hanc* as modified by *Location Fitness* and *Nathaniel* with a belt,

since *Shugg* discloses that a belt can be used to link two handles to provide added exercise to the forward movement of a user's chest.

### ***Response to Arguments***

13. Applicant's arguments filed February 6, 2006 have been fully considered but they are not persuasive. Initially, the added recitation of "a steering control" is considered to be new matter, since the recitation of "a steering control" is not shown or recited in the application as originally filed. Additionally, the claim language Applicant relies upon in claims 1, 10 and 15, do not require that the passenger compartment in the body of the claim be the same passenger compartment recited in the preamble.

14. Applicant's arguments with respect to claim 29 have been considered but are moot in view of the new ground(s) of rejection.

### ***Allowable Subject Matter***

15. Claims 16-28 are allowed.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Radtke* (US Pat. 894,052), *Emmons* (US Pat. 3,513,928), *Jinotti* (US Pat. 4,111,416),  
*Shafer* (US Pat. 4,265,447), *Halvig* (US Pat. 4,664,372), *Connelly* (US Pat. 4,867,445), *McIntire*

(US Pat. 5,178,596), *Froelich, Sr. et al.* (US Pat. 5,749,816), *Porter* (US Pat. 6,500,103 B2) and *Itrich et al.* (US Pat. Pub. 2004/0147379 A1) disclose exercise apparatus and devices directly contacting or supported by the floor of a vehicle having a passenger compartment, wherein the passenger compartment includes a steering control for the vehicle.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
April 3, 2006

JEROME DONNELLY  
PRIMARY EXAMINER

